

## WHAT ARE THE TVPRA PROCEDURAL PROTECTIONS FOR UNACCOMPANIED CHILDREN? *Are They “Loopholes” to Compliance with Our Immigration Enforcement System?*

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) created procedures for processing the cases of unaccompanied children (UAC) in recognition of the vulnerability of children traveling alone to human trafficking and other forms of exploitation.

The procedures specified for unaccompanied children enhance the ability of our legal system to **orderly** and **efficiently** sort through the cases of children who are defending themselves against removal.

To this end, Congress developed the following procedures:

### 1. **Trafficking screening for Mexican children**

Prior to the 2008 law, Mexican children could be turned around at the border without any consideration of whether the child was a victim of trafficking or an asylum seeker. The 2008 law ensures Mexican children will be screened by the Department of Homeland Security prior to return. Implementation of the screening requirement has been criticized by NGOs and UNHCR as inadequate in identifying the protection needs of Mexican children.<sup>1</sup>

### 2. **Detention**

The TVPRA reaffirms the transfer of responsibility for the care and custody of unaccompanied children to the Department of Health and Human Services (HHS), as provided for by the Homeland Security Act of 2002. It also creates release procedures that ensure children are not vulnerable to trafficking after reunification.

### 3. **Asylum**

Recognizing that children are frequently transferred between various detention facilities during their first year in the U.S. and that filing paperwork is impracticable without a permanent location, the TVPRA eliminates the one-year asylum filing deadline for unaccompanied children. The law also recognizes that, because children are not provided legal counsel in removal proceedings, the use of adversarial proceedings would pose a drain on resources and clog an already overwhelmed system. Accordingly, unaccompanied children have the opportunity to have their cases heard before USCIS in an interview process that is more appropriate for children and that is conducted by Asylum Officers who have received training on child interviewing and the adjudication of children’s cases. UAC asylum cases are held to the exact same legal standard as any other case.

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<sup>1</sup> Appleseed Network, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors* (2011), <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>; UNHCR, *Findings and Recommendations Relating to the 2012-2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border* (2014), [http://www.immigrantjustice.org/sites/immigrantjustice.org/files/UNHCR\\_UAC\\_Monitoring\\_Report\\_Final\\_June\\_2014.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf).

#### **4. Special Immigrant Juvenile Status**

Mindful that many children applying for Special Immigrant Juvenile Status (SIJS) are fleeing an abusive parent in their home country and consistent with the TVPRA's intent to protect children from being returned to the hands of their abusers, the TVPRA adjusted the requirements for SIJS. The law now requires that a child prove that one parent abused, neglected, or abandoned the child. The law did not change the standard or level of evidence required, and it still prohibits a child from applying for immigration relief for their non-abusive parent.